

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Commercial Spectrum	)	WT Docket No. 05-211
Enhancement Act and Modernization of the	)	
Commission's Competitive Bidding Rules and	)	
Procedures	)	

COMMENTS OF ANTARES, INC.

Antares, Inc. ("Antares"), pursuant to Sections 1.415 and 1.419 of the Commission's rules,<sup>1</sup> submits these Comments in the captioned proceeding,<sup>2</sup> which explores whether the Commission should modify its "designated entity" or "DE" rules to restrict the award of DE benefits in situations where a DE has an established, material relationship with certain types of large communications service providers. According to the FNPRM, it is the Commission's intent that the proposed rule changes be implemented in advance of the upcoming Advanced Wireless Services ("AWS") auction, so that any modifications to the DE rules would apply to that auction.<sup>3</sup>

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<sup>1</sup> 47 C.F.R. §§ 1.415; 1.419.

<sup>2</sup> In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, *Further Notice of Proposed Rulemaking in WT Docket No. 05-211*, FCC 06-8, released February 3, 2006 ("*FNPRM*").

<sup>3</sup> FNPRM at ¶¶ 1, 21.

Antares is the indirect parent company of Northcoast Communications, LLC, which is a qualified "very small business" under the FCC's current designated entity ("DE") rules.<sup>4</sup> Northcoast was a successful DE bidder in several broadband PCS auctions, and at one point held over 50 broadband PCS licenses. Northcoast still holds four 10 MHz DE PCS licenses for markets in the northeastern United States. Antares has been actively monitoring the FCC's AWS auction proceedings, and presently is examining various alternatives for its potential participation in Auction 66. While Antares is concerned about the rushed nature of this rule making proceeding, the increased likelihood of legal challenges to any rule revisions adopted herein, and the consequent uncertainty that would once again be introduced to an FCC auction process, Antares nonetheless submits these general comments supporting the basic premise of the Council Tree Communications proposal.<sup>5</sup>

In its FNPRM, the Commission seeks comment on three general issues: 1) whether the existing DE rules should be modified as suggested by the Council Tree Proposal to restrict DEs from partnering with large wireless carriers serving the same market areas; 2) how to define the terms "material relationship", "large in-region incumbent wireless providers" and "significant geographic overlap"; and 3) whether the proposed new restriction should be more broadly applied to any "entity with significant interests in communications services".<sup>6</sup> In these brief comments,

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<sup>4</sup> See 47 C.F.R. §§ 1.2110; 24.709.

<sup>5</sup> See Letter from Messrs. Steve C. Hilliard and George T. Laub, Council Tree Communications, Inc. to Marlene H. Dortch, Federal Communications Commission, WT Docket Nos. 02-353, 04-356, RM-10956 (June 13, 2005) ("Council Tree Proposal").

<sup>6</sup> FNPRM at ¶ 10.

Antares expresses its position on the first and third issues. Specifically, Antares supports the Commission's tentative conclusion to modify its DE rules to preclude the award of auction benefits to DEs that have a material relationship with a large, in-region incumbent wireless service provider. However, as explained below, Antares does not support extending this restriction to DEs that have relationships "with entities with significant interests in communications services".

Antares believes that there are several legitimate reasons for drawing a distinction between DEs with relationships with large, in-region wireless service providers, and DEs who have relationships with other entities that provide communications services. First, as the Commission is well aware, the CMRS industry has experienced significant consolidation within the past two years.<sup>7</sup> Antares believes that this consolidation has occurred for a variety of reasons, including the elimination of the FCC's former cellular cross-interest and spectrum cap rules. Regardless of the causes, the net result is that more CMRS spectrum is controlled by fewer large nationwide CMRS carriers than just two years ago. Second, as Council Tree points out, all of the remaining nationwide CMRS carriers have now established relationships with DEs,<sup>8</sup> which has resulted in incumbent wireless-backed DEs winning the vast majority of spectrum licenses among DEs participating in recent auctions with DE preferences. Consequently, if the Commission is serious about continuing to encourage independent small business

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<sup>7</sup> See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Tenth Report in WT Docket 05-71*, 05-173, released September 30, 2005, ¶¶ 2, 58-62.

<sup>8</sup> See January 11, 2006 Ex Parte Presentation of Council Tree Communications, Inc. in WT Docket 05-211, "Abundantly Clear Need to Implement DE Program Reforms Immediately for the AWS Auction", pp. 9-10.

participation in the AWS auction process, and thereby the wireless industry, it should adopt this limited restriction regarding DE structure.

As a practical matter, however, the Commission needs to balance the public policy goal of continuing to encourage small business participation within the wireless industry against the very real need for qualified smaller businesses to raise capital in order to participate in wireless service auctions. One of the most logical avenues for DEs to pursue to attract capital is to partner with larger entities in related industries, such as the communications industry generally. The critical distinction here is that non-wireless communication service providers most likely would be better equipped to intelligently assess a DE investment opportunity and offer related industry experience (and perhaps even contacts) than a potential investor from a completely unrelated industry segment, and yet these potential communications industry investors do not already control significant chunks of CMRS spectrum which already allow them to already generate billions of dollars in revenues based on their control of that spectrum. Therefore, if the Commission were to extend the proposed “material relationship” restriction to any entity engaged in the provision of communications services, Antares believes that such a broad restriction would severely hamper the ability of DEs to raise capital from otherwise interested, logical sources.

The Commission also requests comment on its proposal that any DE rule changes adopted in this proceeding apply retroactively to entities that may have already filed short form applications to participate in the AWS auction.<sup>9</sup> Antares simply comments that this would be an unfair and unwise approach. It is unfair since as a matter of good public policy, auction participants should have the benefit

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<sup>9</sup> FNPRM at ¶ 21.

of having all applicable rules finalized before they commit to participate in a government-sponsored auction, in which there are serious penalties for failed business plans, regardless of their cause. It is unwise because such a rushed rule making likely will lead to unnecessary legal challenges that ultimately could dramatically slow down the roll-out of AWS spectrum and services to the public.

In sum, Antares encourages the Commission to modify the DE rules to preclude DEs from having material relationships with large, incumbent wireless service providers, but to avoid adoption of any additional restrictions covering DE relationships with entities that do not already

control CMRS spectrum or provide wireless service.

Respectfully submitted,  
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